BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

IN THE MATTER OF	§	
SECTION 272(f)(1) SUNSET OF THE	§	
BOC SEPARATE AFFILIATE AND	§	**WC DOCKET NO. 02-112**
RELATED REQUIREMENTS	§	

REPLY COMMENTS OF THE OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF TEXAS

NOW COMES THE STATE OF TEXAS (State), by and through the Office of The Attorney General of Texas, Consumer Protection Division and files these its reply comments on the Notice of Proposed Rulemaking released May 24th, 2002 in FCC Order No. 02-148. These comments are timely filed pursuant to the Commission's subsequent order in DA-02-1741.

The Office of the Attorney General submits these reply comments as the representative of state agencies and state universities as consumers of telecommunications services in the State of Texas. We address the numerous reasons for the need for continuation of the separate affiliate requirement as follows:

A) Market Power

1) Regional Bell Operating Companies (RBOCs) continue to possess substantial market power in the provision of end-user connections as well as local transport such that they continue to have the incentive to discriminate.

2) RBOCs continue to possess either a complete monopoly or substantial market power in the provision of local exchange and exchange access over large swaths of territory in states in which they have been granted Section 271 approval.

3) Even in the most competitive markets, competitors are still dependent upon incumbents for the provision of special access facilities.

4) RBOCs have an incentive to exploit their market power by engaging in both price and non-price discrimination in the provision of special access services.

5) Replacing rate of return regulation with price caps reduces but does not eliminate the incentive to cross-subsidize. ILECs have the incentive to pad the rate base with artificial increases in costs to make it look as though they earn only a reasonable profit on regulated service.

6) ILECs continue to possess market power in the local exchange and exchange access market, whether narrowband or broadband services are involved.

7) The last 12-18 months has seen the exit of numerous competitive LECs from the marketplace; the RBOCs remain dominant in every state, including those where they have obtained Section 271 authority.

8) Insufficient time has passed since the grant of Section 271 authority to any RBOC to assess fully the impact on competition of the RBOC's entry into the long distance market.

9) The RBOCs have gained market share at a far greater rate than any previous new entrant in the long distance market.

B) Regulations are Reasonable and NOT Too Costly

1) Rather than establish a blanket prohibition on the joint ownership of equipment and property or sharing employee services between an RBOC and its Section 272 affiliate, the Commission limited the joint-ownership prohibition to transmission and switching equipment and the land and buildings where those facilities are located and permits the

sharing of administrative and others services. In addition, RBOCs have routinely gained about 25% of the relevant market within a year or two of gaining Section 271 approval in a state.

2) RBOCs' "efficiency losses" arguments are suspect, since the rules permit RBOC and section 272 affiliates to share a broad range of services and facilities, including sales, marketing, and administrative services.

3) The RBOCs who have gained 271 in-region interLATA approval have had little difficulty in competing, even with the safeguards: SBC's long distance subscribership has increased by 33% in one year.

C) No Change in Competition/RBOC Violations

1) SBC, Verizon, and Qwest have all been fined for a list of abuses and violations of their statutory and regulatory obligations–all of which occurred during a period in which the RBOCs must have been particularly sensitive to the need for compliance.

2) The RBOCs have used every means to slow or prevent the development of robust competition including seeking to impose onerous security deposit and advance payment requirements on CLECs and engaging in unreasonable winback practices.

Finally, we continue to endorse the comments of the Public Utility Commission of Texas as filed and fully support its recommendation that structural separation be extended for a minimum of one year beyond the current sunset date but preferably until after completion of the second biennial audit of SWBT.

The Office of the Attorney General of Texas appreciates this opportunity to provide reply comments on this Notice of Proposed Rulemaking.

Respectfully submitted,

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Date: August 26, 2002